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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,337	08/19/2003	Frederick J. Kelly		3971

7590 02/18/2004

Frank A. LaViola, Jr.
Cameron Fabricating Corporation
PO Box 478
Horseheads, NY 14845

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,337

Applicant(s)

KELLY, FREDERICK J.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2003/0033750 to Gunderman et al in view of U.S. Patent No. 6,209,258 to Schneider.

Regarding Claim 1, Gunderman et al teaches a plant support device for aiding in supporting climbing plants, said device comprising: a plurality of uprights (Gunderman #16), each of said uprights having a profile, each of said uprights having two ends, one of said ends being a bent end having multiple bends to form a substantially horizontal portion and a vertical portion (Gunderman #18 and 19), a plurality of hoops (Gunderman #14 and 12),

Gunderman is silent on a removable clamping means for the hoops. However, Schneider teaches each of said hoops having a plurality of clamping mechanisms for attaching said hoops to said plurality of uprights (Schneider Fig. 8), said clamping mechanisms having a first part attached to said hoop and a second fitted part which is shaped to conform to the profile of said uprights (Schneider Fig. 8 #42), said clamping mechanisms having securing means (Schneider Fig. 8 #44) for attaching said second fitted part to said first part whereby said hoops are removeably attached to said uprights

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forming a supporting structure for plants. It would have been obvious to one of ordinary skill in the art to modify the teachings of Gunderman et al with the teachings of Schneider at the time of the invention since the modification is merely the selection of an old and well-known alternate equivalent means of hoop attachment for the ability to adjust the hoop height and frequency to meet the support needs of a different variety of plants.

Regarding Claim 2, Gunderman as modified teaches the uprights have a length and a plurality of holes along said length, said holes being arranged in a line along said length and spaced a predetermined distance apart (Schneider Fig. 3 #36).

Regarding Claim 3, Gunderman as modified teaches the clamping mechanisms have a knob, said knob being sized and shaped to correspondingly engage said plurality of holes in said uprights to lockingly attach said hoops to said uprights when said securing means are tightened (Schneider Fig. 8 #44 and Fig. 9).

Regarding Claim 4, Gunderman as modified teaches the securing means are hardware to attach said first part and said second fitted part together (Schneider #44).

Regarding Claims 5 and 14, Gunderman as modified teaches the one bent end is of greater dimension than the other end whereby the greater dimension provides a more stable base for attachment to the ground and prevents tipping of the support device and plant in a moderate wind (Gunderman Fig. 1 #18 and 19).

Regarding Claim 6, Gunderman as modified teaches the hoops are removeably attached to said uprights and can be separated by removing said securing means (Schneider Fig. 9 #46).

Regarding Claim 7, Gunderman as modified inherently teaches the number of said clamping mechanisms on each hoop corresponds to the number of uprights (Schneider Fig. 8 and 9).

Regarding Claim 8, Gunderman as modified teaches the uprights are of a set length and made of a single unitary construction, and each of said hoops are made of a single unitary construction (Gunderman Fig. 1).

Regarding Claim 9, Gunderman as modified teaches the hoops are made in a plurality of geometric shapes and sizes to accommodate various size and shaped plants (Schneider Fig. 10A-C).

Regarding Claim 10, Gunderman as modified teaches the uprights are made of several smaller individual pieces interconnected to form a maximum length and each of said hoops is made of smaller portions interconnected to form various shapes and dimensions (Schneider Fig. 2 #16 and Figs. 10A-C).

Regarding Claims 11, 12, and 13, Gunderman as modified teaches the uprights, hoops and clamping mechanisms are made of plastics, metal, or fiber glass (Schneider Col. 5 lines 18-22).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Japanese Patent JP2001320976A; German Patent DE 03433374; German Patent DE 3009354A; Japanese Patent JP2001340029 ; Japanese Patent JP09028202 ; Japanese Patent JP 10313699A ; U.S. Patent No. 4,561,208; U.S. Patent


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No. 4,860,489; U.S. Patent No. 3,061,976; U.S. Patent No. 1,536,679; and U.S. Patent No. 4,534,129.

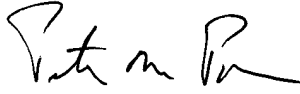
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Examiner
Art Unit 3643

03 February 2004


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600